

Village of Irvington
Zoning Board of Appeals

Minutes of Meeting held May 24, 2005

A meeting of the Zoning Board of Appeals of the Village of Irvington was held at 8:00 P.M., Tuesday, May 24, 2005, in the Trustees' Meeting Room, Town Hall, Irvington, N.Y.

The following members of the Board were present:

Louis C. Lustenberger, Chairman
Bruce E. Clark
Christopher Mitchell
Arthur J. Semetis

Mr. Lustenberger acted as Chairman and Mr. Mitchell as Secretary of the meeting.

Minutes for the Board's meeting of April 26, 2005 were approved.

There were six matters on the agenda:

Continuations

2005-12 Tracy Calvin & Gordon Fearey - 20 Willow Street (Sheet 07A; Block 232; Lot 26,27) seeking a variance from sections 224-11 (front yard setback) and 224134 (exceeds allowable coverage) of the Village Code in order to construct a front porch and rear deck.

New Matters

2004-27 Bernard & Isabel Milano - 3 Bracebridge Lane (Sheet 4; Block 245A; Lots 5 & 6) seeking a

variance from section 224-10 (lot requirements) and Article XV (resource protection) of the Village Code to permit the subdivision of existing lots.

- 2005-15 Adam Levy - 91 Dogwood Lane (Sheet 10; Block 260; Lot 9) seeking a variance from sections 224-11 (front yard setbacks) and 224-13 (exceeds allowable coverage) of the Village Code in order to legalize a rear deck and steps.
- 2005-16 Richard Davies and Claudia Smith - 23 Maple Street (Sheet 07A; Block 232; Lot 9) seeking an interpretation of and variance from sections 224-134 (residential FAR), 224-135 (definitions of gross floor area) and 224-137 (exemptions from calculation of FAR in residential zones) of the Village Code in order to replace an existing pulldown attic stairway with a permanent stairway.
- 2005-17 Parlu Restaurant Partners LLC - 63 Main Street (Sheet 5; Block 209; Lot 16) seeking a variance from sections 224-36 (14) (b) (use regulations - density) and 224-36 (14) (c) (use regulations - coverage) of the Village Code in order to construct an addition.
- 2005-18 Dena and Charles Friedman - 85 Greenway Drive (Sheet 10G; Block 3; Lot 85) seeking a variance from sections 224-11 (rear yard encroachment of a deck) and 224-89 (non-conforming lot size) of the Village Code in order to enclose an existing screen room and build a deck addition.

Calvan/Fearey

Mr. John Whelan, an architect from the firm retained by the applicants, presented a map comparing distances from the street curb to the foundation or entrance area of houses along Willow Street. The existing distance at 20 Willow Street, the applicants' property, was listed as

25.17', while the distances found at other properties on Willow Street ranged from 16.57' to 41.02'. If the front porch for which a variance is requested were built, the distance to the curb at 20 Willow Street was projected to be 21.67'.

Mr. Clark asked for clarification on the comparative setbacks from the property line - as distinguished from the curb line - on the west side of Willow Street. Mr. Whelan replied that since it was difficult to establish the location of the property line in most cases, he had measured from the curb in order to provide a set of comparable figures.

The chair asked whether anyone present wished to be heard on this application. Mr. Dale Russell of 12 Willow Street stated that he sees the north elevation of the Calvin/Fearey home from his own, and that he favored the construction of both front and rear porches, as applied for. Mr. Russell stated that he was a landscape architect, and that he preferred the variety of setbacks and front porches that exists on Willow Street, rather than a uniform placement of building facades. Ms. Claudia Smith of 23 Maple Street stated that she and her husband supported the granting of the variances requested. Mr. Fearey, one of the applicants, submitted two letters of support from

additional neighbors, Katie Carron of 24 Willow Street and Trish Waters of 5 Willow Street.

Mr. Mitchell, who had requested a continuation of this matter so that he could view the location, stated that upon full consideration, the front porch for which a variance was sought would not be out of keeping with the ambiance of Willow Street; he also noted the positive comments of neighbors, and absence of voiced objections from neighbors. The chair offered a motion favoring the granting of both requested variances. Mr. Clark expressed a worry about the possibility of setting a precedent that might be cited in other cases. The board then voted 4-0 in favor of the chair's resolution.

Milano

Norman Sheer, attorney for the applicants, stated that this matter involved what had been two tax lots, purchased at different times (but in the same names) by Mr. and Mrs. Milano. In 1989, the applicants purchased "Lot 2" (as described in the full written application), and by 1991 had constructed their home on it. In August of 1991 they purchased "Lot 1" immediately to the south, intending to develop it, since a building permit and needed variances had been granted for both lots by Village entities including the Zoning Board of Appeals.

However, the use of the same names in both purchases had the unintended legal effect of merging the two lots, each of which falls short of requirements of the R-20 zoning adopted for this area early in 1989 (after the original building permits were issued). Lot 2 covers approximately 12,800 square feet, while Lot 1 contains 13,300 square feet. Now the applicants wish to develop the vacant Lot 1, and request that the Board, in effect, confirm the variances it granted prior to the erroneous lot merger. The Milanos, Mr. Sheer stated, have complied with the Board's past requirement to construct a wall separating both lots from Broadway, and they also installed utility hookups on Lot 1 prior to discovering the legal oversight involving title. Lot 1 would be substantially more valuable to the applicants if it could be developed, he added, and it is substantially equal in size to the already-developed lots located nearby. Mr. Sheer showed photographs of Lot 1 in relation to adjacent properties to bolster his assertions.

The chair asked whether anyone present wished to comment, and Theresa Cicalo-Speiss of 93 North Broadway, a neighboring address, asked why the area's zoning had been changed, only to see construction proceed on a lot smaller than 20,000 square feet. The chair responded that overall

zoning changes were not part of the Zoning Board of Appeals' province. Discussion ensued between Board members and Mr. Sheer. Mr. Clark observed that the present issue was quite unique. In discussion of a motion from the chair to grant the requested variances, it was mentioned that no precedent for other cases should be read into the granting of these variances. The chair's motion was passed by a vote of 4-0.

Levy

There was brief discussion of Mr. Levy's request to legalize a deck and steps built by a previous owner, whose non-conforming status came to light when Mr. Levy purchased the property. The variances were deemed to be very modest, and by a vote of 4-0 the Board passed a resolution granting them.

Davies/Smith

The applicants wish to install a permanent staircase to the attic of their home, a change that was interpreted by the Building Department as requiring a variance by adding to the structure's floor area. The applicants, represented by architect Earl Ferguson, disagreed with that interpretation, since under the current Code, half the square footage of attics is excluded from floor-area-ratio calculations, regardless of how the attics may be accessed.

It was explained that no exterior modification was planned by the owners, and the applicants stated that nineteen square feet of floor would actually be eliminated, representing the attic floor removed to accommodate the head of the planned new staircase.

The chair commented that in his view it was not necessary for the Board to reach the issue of providing an interpretation, and could deal with the practical matter at hand by treating the application as a request for a 7.3% FAR variance - the variance that would be needed if the entire attic area were factored into the home's FAR calculation. After concise discussion, the chair offered a resolution to grant such a variance, which was passed by a vote of 4-0.

Parlu Restaurant Partners

Norman Sheer spoke as attorney for the applicants, proprietors of the Red Hat Bistro on Main Street. Mr. Sheer described the two variances requested: one to permit a dwelling unit above the restaurant (a use not sanctioned under the Code but frequently occurring in the Village), and a second to allow 100% coverage of the lot at 63 Main Street, when the Code limits such coverage by a business to 70%. Mr. Sheer stated that there had been an occupied apartment on the premises for many years, and that the

ground floor had been used as a restaurant and/or bar for many decades. Parlu Restaurant Partners, who rent their space at 63 Main Street, wish to construct (with the building owner's permission) additional dining space at the rear of the property, in an area that is presently paved. Since the paving counts as coverage, Mr. Sheer continued, construction under the requested variance would simply result in the same 100% coverage that currently exists.

Mr. John Hepburn of 11 North Eckar Street, whose home is separated from the Parlu site by one intervening building, objected to the granting of these variances. He asserted that the planned construction would fill in a presently-open site, and would reduce the amount of light and air reaching the area. This change would be detrimental to him and to other neighbors, he asserted. Mr. Mitchell also questioned whether the presence of paving blocks should be considered the full equivalent of a one-story building, in assessing whether the requested variance would produce change in the property under discussion. The chair offered a resolution to approve the requested variances, which was passed by a vote of 3-1.

Friedman

Architect Arthur Chabon appeared on behalf of the applicants, and described the plan to demolish an existing

deck and build a new one virtually at grade, as well as enclosing what had been a screened porch. It appeared from the drawings presented and from Mr. Chabon's statement that the new deck might well be less conspicuous than the old, while the screen-porch enclosure would cause little visible alteration. Many if not most lots at Fieldpoint are non-conforming, it was stated. The Architectural Review Committee of the Fieldpoint Community Association had indicated by a letter of February 18, 2005 that it had no objection to the Friedmans' alteration plans. The chair offered a resolution to approve the requested variances, which was passed by a vote of 4-0.

There being no further business to come before the meeting, it was, upon motion duly made and seconded, unanimously adjourned.

Christopher Mitchell